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2   UNITED STATES DISTRICT COURT
    EASTERN DISTRICT OF NEW YORK
3   Case No. 14 CV 3014 (SLT)(RML)
4   - - - - - - - - - - - - - - - - - - - - - -x
    GONZALO CORTES,
5
                            Plaintiff,
6
              -against-
7
    CITY OF NEW YORK; Sergeant JONCRIS
8   RZONCA, Shield No. 2960; Police Officer
    MATTHEW SMITH, Shield 9407; Police
9   Officer CHRISTOPHER MUSA, Shield No.
    9064; Police Officer DOMINIC RUGGIERO,
10  Shield No. 20894; and JOHN and JANE DOE
    1 through10, individually and in their
11  official capacities (the names John and
    Jane Doe being fictitious, as the true
12  names are presently unknown),
13                          Defendants.
    - - - - - - - - - - - - - - - - - - - - - -x
14
                            305 Broadway
15                          New York, New York
16                          August 25, 2015
                            10:20 a.m.
17
18      DEPOSITION of JOSE GUZMAN, a Non-Party
19  Witness, in the above-entitled action,
20  held at the above time and place, taken
21  before Arthur Hecht, a Shorthand Reporter
22  and Notary Public of the State of New
23  York, pursuant to the Federal Rules of
24  Civil Procedure, and stipulations between
25  Counsel.

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2    A P P E A R A N C E S :

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     HARVIS & FETT, ESQS.
4    Attorneys for Plaintiff
     305 Broadway
5    New York, New York 10007
     BY:  GABRIEL HARVIS, ESQ.
6        -and-
           BAREE N. FETT, ESQ.

7

8

     ZACHARY W. CARTER, ESQ.
9    CORPORATION COUNSEL, THE CITY OF NEW YORK
     100 Church Street
10   New York, New York 10007
     BY:  ELISSA B. JACOBS, ESQ.

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2       A.    It depends on what type of

3   custody.  If he got injured while being

4   placed in handcuffs, I would not do a

5   letterhead, I would not do a 40 -- we call

6   it a 49.

7       Q.    That's on the arrest report,

8   right, stuff like that?

9       A.    That would be under the medical

10  treatment of prisoner form.

11      Q.    Right.

12      A.    If -- to my understanding, if he

13  were to be injured in the cell area by an

14  officer, then there I would -- I would

15  probably do a -- not probably, I

16  personally would do a 49.

17      Q.    Now, let's say, I just want to

18  tease this out for a minute, so let's say

19  a couple of things, let's say that the

20  person isn't injured by an officer,

21  they're walking out of the cell or walking

22  into the precinct, they trip over

23  something and they bump their head, so

24  it's not like somebody beat them up but

25  they just got hurt, would there be a

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2  department letterhead at that point --

3       A.     No.

4       Q.     -- in your experience?

5       A.     No, just medical treatment of

6  prisoner form.

7       Q.     Let's say that no officer

8  reports a use of force, but a prisoner

9  says to reports having been injured by an

10  officer, so there's a dispute, the person

11  says they're injured by an officer,

12  there's no report from an officer, as a

13  desk sergeant, would you prepare a

14  letterhead report memo on it?

15       A.     A letterhead or unusual?  It

16  depends on the -- I interview the

17  prisoners that are claiming injuries, and

18  if the prisoner is claiming -- if the

19  prisoner is claiming that they're injured

20  by Officer Ryan, let's just say, if a

21  prisoner's claiming that they've been

22  injured in the cells by Officer Ryan, I

23  ask for the details of that.

24            If he's claiming -- if he's

25  claiming he was injured excessive force

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 2   while in the cells, I personally call
 3   Internal Affairs.
 4        Q.    Okay.  Your understanding is
 5   when a prisoner alleges the use of
 6   excessive force by a police officer while
 7   in custody, that warrants a call from the
 8   command to the Internal Affairs Bureau?
 9        A.    Yes.
10             MS. JACOBS:  Objection.
11        Q.    Okay.  If a call is made like
12   that to Internal Affairs, where would you
13   document that, if anywhere, command log?
14        A.    No, I would not document that in
15   the command log.  I personally would
16   document that in -- I'm not even sure.
17        Q.    Okay.
18        A.    I think if I ever came across a
19   situation like that, maybe the telephone
20   record.
21        Q.    What's the telephone record?
22        A.    It's a -- telephone record, it's
23   a book in the precinct where important
24   calls are made to the precinct.
25        Q.    I see.
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2      A.     This usually just means they're

3    assigned their assignment, but if -- let's

4    just say throughout the course of the day,

5    one of the impact officers -- one of the

6    impact sergeants were to give Sergeant

7    Daly a break, then Sergeant Leontis were

8    to take the desk.

9      Q.     Inside of the precinct during

10   this tour, based on the roll call, the

11   command log and your own knowledge, is

12   there anyone above the rank of sergeant in

13   the command?

14              MS. JACOBS:  Objection.  He can

15       answer.

16      A.     Based on this roll call -- based

17   on this roll call, no.

18      Q.     Okay.

19      A.     But our tours -- our tours, they

20   could be another -- there could be a

21   higher rank working from a previous tour

22   that overlaps our tour.

23      Q.     Go you.

24              Is there in the overnight at the

25   115th Precinct when you were working

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2    during that period of time, was there

3    normally or ordinarily a person above the

4    rank of sergeant present during those

5    tours?

6              MS. JACOBS:   Just to be clear,

7       for that period of time, you mean --

8       Q.    For the period of time when you

9    worked.  Well, no, actually I just mean in

10   your experience working overnights for the

11   115.

12      A.    Working overnights in the 115th,

13   there is usually is a higher rank working

14   with you.

15      Q.    Is that person usually a

16   lieutenant?

17      A.    That person is usually a

18   lieutenant.

19      Q.    Do lieutenants appear on role

20   calls?

21      A.    They do.

22      Q.    So do you think that -- you see

23   lieutenant on here?

24      A.    Yeah.

25      Q.    Great, what page?

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2              MS. JACOBS:  You can refer to

3       the page.

4       Q.    Yes, each page has a number.

5       A.    Fifty-two, the lieutenant

6   assigned to midnight --

7       Q.    Yes.

8       A.    -- is listed as sick.

9       Q.    I see.

10      A.    He was long-term sick.

11      Q.    Okay.

12      A.    So we didn't have a lieutenant

13  working our tour for a few months.

14      Q.    I see, okay.

15            The few months that included

16  July 2013?

17      A.    That would be correct.

18      Q.    I guess I can ask you

19  specifically about this tour, on July 1,

20  2013 when you were working, was there a

21  lieutenant in the command?

22      A.    From my knowledge, according to

23  this, no.

24      Q.    What about your own independent

25  recollection?